**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2449 OF 1992**

Shri.Mahadeo Khandu Jadhav ..Petitoner

V/s.

Smt.Housabai alias Yashodabai Eknath Admane ..Respondent

**WITH**

**WRIT PETITION NO.707 OF 1993**

Mrs.Housabai alias Yashodabai Eknath Admane ..Petitioner

V/s.

Shri.Mahadeo Khandu Jadhav ..Respondent

Mr.Mandar Limaye, advocate for petitioner.

None for respondent.

**Coram : D.G.Deshpande,J.**

**Date : 16th October, 2006**

**P.C.**

1. Heard advocate for the petitioner in W.P.No.2449 of 1992. Mahadeo Khandu Jadhav is the petitioner tenant and Housabai Admane is the land lady. The proceedings are under the Rent Act.

2. The respondent Housabai Admane landlady filed a suit for ejectment on different grounds. One of them being change of user by tenant. Her suit was dismissed by the trial Court. She preferred an appeal. The Appellate Court allowed the appeal and decreed the suit on the ground of change of user only. Against that part of the decree tenant has filed his petition and against rejection of her case on other grounds the landlady has filed this Writ Petition No.707 of 1993.

3. So far as order of the Appellate Court in favour of the landlady on the ground of change of user by the tenant is concerned, counsel for the tenant contended that findings of the Appellate Court in that regard are perverse. Firstly according to him, burden of proving change of user was on the landlady. She had not discharged that burden at all. Secondly, approach of the Appellate Court in not relying upon admissions given by the tenant in his reply, was totally wrong. In fact,

according to him, stand of the tenant was consistent with the case of the landloard and there was no question of coming to the conclusion that there was no change of user.

4. Thirdly, Counsel for the tenant contended that while appeal was pending. This premies were declared as slum area. He has not filed notification before the Appellate Court and that aspect of the matter requires consideration. He admits that notification in that regard is filed in this petition.

5. Counsel for the tenant had given a copy of notice by the landlady. It is at Exh.12. In that notice landlady is asserting in para II that House No.825 at Kasba Peth, Pune, was owned by her and an area of 8 x 12 feet was given by her to the tenant for the business of selling waste paper on monthly rent of Rs.15/-. Therefore, from this it is clear that in para II landlady has asserted that premises were given for business purpose.

6. The tenant gave reply to this notice. He has admitted in the reply that in the said area or premises he is carrying his business and he has got licence of Pune Municipal Corporation in that regard.

7. Therefore, so far as notice of landlady and reply of tenant are concerned, whatever is alleged by the landlady is accepted and admitted by the tenant. Both of them came up with the case atleast at that stage that the suit premises were being used for business. If, that was the end of the matter then there was no question of giving any finding in favour of the landlady by the Appellate Court. However, Appellate Court has also referred to Written Statement of the tenant. In the Written Statement, particularly, in reply to para 5 the defendant has stated that contention of the plaintiff that defendant was carrying on business in the premises was totally false. Then the defendant has alleged that he cannot read and write properly. Reply given by him to the notice of the advocate of the landlady was got written through

his maternal uncle and by mistake he has stated in the said reply that he is carrying on business in the suit premises. Thereafter, the defendant has asserted in the Written Statement that since 1962 he has taken the suit premises for the residential purpose and he was using it for residence only. This part of the Written Statement was taken by the Appellate Court as an admission of the tenant about change of user.

8. Counsel for the tenant repeatedly urged that defendant has committed a mistake in giving admission when he has admitted in the reply that he was carrying on business, he was hinting, at some other premises and not to the suit premises. He also urged that landlady has failed to prove change of user.

9. Both the contentions of the advocate for the defendant are devoid of any merit and substance. It is clear from the conduct of the tenant that he is changing his stand from time to time & raising false pleas. In the notice given by the landlady

she has referred particular Gat Number. Reply given by the tenant is with reference to that Gat Number. The maternal uncle who alleged to have prepared the reply, was not examined by him. His explanation in the Written Statement that there was a mistake in the reply is an after thought.

10. In fact, this is a case where the trial Court should have and could have passed a decree in favour of the landlady on the ground of change of user by clear cut admission of the tenant in the Written Statement wherein as stated above the tenant has clearly admitted that he is residing in the suit premises since 1962.

11. When the defendant has therefore, taken a contradictory stand and he has given clear cut admission about change of user as for the purpose of residence, suit of the landlady ought to have been decreed and there was no necessity for the landlady to examine any witnesses to prove this fact.

12. Approach of the trial Court was totally wrong. In the circumstances, the Appellate Court has exercised jurisdiction rightly and came to the right conclusion and decreed the suit in favour of the landlady on the ground of change of user. There is no merit in this petition No.2449 of 1992 of the tenant. Therefore, it is dismissed.

13. So far as Writ Petition No.707 of 1993 is concerned, nobody appeared for the landlady when the matter was called upon. That petition is dismissed accordingly. Rule discharged. Ad-interim relief, if any, stands vacated. No order as to costs.

**(D.G.Deshpande,J.)**